



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 21, 1998

Mr. Jason C. Marshall
Nichols, Jackson, Dillard, Hager
& Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR98-3199

Dear Mr. Marshall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120829.

The City of Coppell (the "city") received a request for information pertaining to the investigation of a named individual for "theft of monies" at the Coppell Independent School District and "other similar criminal acts." You submit a representative sample of the requested information.¹ You indicate that the city has released "first page information" to the requestor.

You seek to withhold the rest of the requested information under section 552.108.

Section 552.108(a)(1) excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor
that deals with the detection, investigation, or prosecution of crime . . .
if:

(1) release of the information would interfere with the
detection, investigation, or prosecution of crime[.]

¹In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You advise that the alleged theft to which the requested information pertains is under active investigation. Based on your representations, we conclude that you may generally withhold the requested information under section 552.108(a)(1).²

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Because you have raised no other exception to disclosure, the city must, if it has not already done so, release these types of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

You also ask that the city not be required to "respond" to the request here because "the very action of providing a response as required under the Texas Public Information Act could in itself unduly interfere with law enforcement by allowing a suspect to identify whether or not they are the subject of a current investigation." It has come to our attention that the individual named in the request for investigative materials here has been arrested and indicted by the Dallas County Grand Jury, in connection with the incident to which the investigation pertained. Thus, the fact that this individual was a suspect in the investigation in question has been made public. Under the circumstances, and particularly as we have permitted you generally to withhold the requested information under section 552.108, we do not believe that you have established that the city's "responding" to the request would interfere with law enforcement.³

We note finally that the requestor also asks in the same written request for copies of "all documents the City relies on or will rely on to claim an exception from disclosure under Gov't Code § 552.301 (a) for the above-requested documents." You indicate that your request for an attorney general decision and an attached "Confidential Supplement" would be responsive to this part of the request. We understand you seek to withhold the "Confidential Supplement" under section 552.108.

We assume that the "Confidential Supplement" in question was created after the submission of the request to the city. The Open Records Act applies only to information in existence at the time of the request. *See e.g.*, Open Records Decision No. 452 (1986).

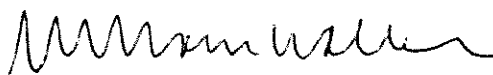
²We note that it has come to our attention that the investigation has now led to an arrest and indictment. *See discussion, infra.*

³We take this opportunity to note that in arguing that the city should not have to "respond" to a request for law enforcement information -- *i.e.* should not have to indicate whether information responsive to the request exists -- the city must make a particularized showing why its "responding" would interfere with law enforcement. Recitation of a generic argument such as you make here is, in our view, insufficient. Such a showing made in correspondence with this office, would of course be confidential to the extent that it tended to reveal information the city was legitimately seeking to protect by not "responding."

Therefore, the "Confidential Supplement" is not within the scope of the instant request. *But see also*, Open Records Decision No. 459 (1987) (Governmental body may withhold portions of letter requesting an attorney general's decision which have the effect of disclosing the information the attorney general finds may be withheld).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker", with a stylized, cursive script.

William Walker
Assistant Attorney General
Open Records Division

WMW/rho

Ref: ID# 120829

Enclosures: Submitted documents

cc: Mr. R. G. Harrell
548 W. Oak Grove
Coppell, Texas 75019
(w/o enclosures)